

**IN THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT**

R E C E I V E
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES DEPARTMENT OF)
AGRICULTURE, ANIMAL AND)
PLANT HEALTH INSPECTION)
SERVICE, and MIKE JOHANNNS,)
IN HIS CAPACITY AS THE)
SECRETARY OF AGRICULTURE,)

Defendants-Appellants,)

v.)

RANCHERS CATTLEMAN)
ACTION LEGAL FUND UNITED)
STOCKGROWERS OF AMERICA,)
Plaintiff-Appellee.)

ORIGINAL

MAY 11 6 2005

FILED 5-6-5
DOCKETED 5-10-5
DATE

No. 05-35264

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MAY - 9 2005

INITIAL R2

**REPLY TO R-CALF'S OPPOSITION TO MOTIONS FOR LEAVE
TO FILE AMICI CURIAE BRIEFS**

Amici Curiae Petitioners, The Camelid Alliance, et al.¹ hereinafter
("Camelids"), by and through its undersigned counsel of record, files their

¹ Amici includes The Camelid Alliance; Lama Association of North America; Western Idaho Llama Association; The Pack Llama Trial Association; Rocky Mountain Llama and Alpaca Association; Carolina Alpaca Breeders and Owners, Inc.; Vancouver Islands Llama & Alpaca Club; LAMA Association of the Mid Atlantic States; Greater Appalachian Llama & Alpaca Association; The Maine Alpaca Association; Missouri Llama Association; Pennsylvania Llama & Alpaca Association; Ohio River Valley Llama Association; Illinois Alpaca Owners and Breeders Association; Columbia Alpaca Breeders Association; Great Lakes Alpaca Association; Golden Plains Llama Association; Maine Llama Association; Alpaca Ranchers of the Northwest; The Canadian Llama and Alpaca Association; Ontario Camelids Association; BC Llama Lovers; Saskatchewan Alpaca Breeders' Network; and Chief Mountain Llama & Alpaca Club.

reply to Plaintiff, Ranchers Cattlemen Action Legal Fund United Stockgrowers of America's (R-CALF) Opposition to All Motions for Leave to File Amici Briefs and in particular the Amici Curiae Brief filed on behalf of Camelids.

In its opposition memorandum, R-CALF argues that, with the exception of the Camelids' brief, the other amici curiae briefs are redundant and duplicative of the appellant's brief filed on behalf of the USDA. They contend that these briefs should not be allowed on the grounds that they do not raise any relevant matter that has not already been addressed by the parties as required by Fed. R. App. P. 29 (FRAP 29). With respect to the Camelids' brief, R-CALF concedes that the matters raised by the Camelids' were not brought to the attention of the court by any party as contemplated by FRAP 29. However, they argue that these matters are "new evidence or issues" which somehow expands the scope of the appeal and, as a result, should not be allowed."

Camelids suggest that R-CALF's inconsistent arguments are nothing more than a thinly veiled attempt to divert attention from one of the glaring weaknesses of their preliminary injunction — injunctive relief which was not narrowly tailored to the specific harm claimed. See *Consolidation Coal Company v. Disabled Miners of Southern W. Va.*, 442 F. 2d. 1261, 1267 (4th

Cir. 1971); *United States v. Holtzman*, 762 F.2d 720, 726 (9th Cir. 1985); *Gibson v. Firestone*, 741 F.2d 1268, 1273 (11th Cir. 1984). Camelids brief simply draws the Court's attention to this weakness by addressing the proper standard for issuing an injunction by a district court. No additional evidence is required and the issue of the district court's abuse of discretion in issuing the injunction was raised by the USDA (See Appellants' brief at p. 27) but not fully addressed.

In the district court, R-CALF sought to enjoin the Final Rule promulgated by the USDA, which opened the Canadian border to cattle and other species including camelids. R-CALF argued that enjoining the Final Rule was necessary to close the border to Canadian cattle in order to protect the interests of the U.S. cattle industry. It is painfully clear and obvious that if injunctive relief was warranted, it could have and should have been limited to cattle. Unfortunately, the injunction was not limited by the district court and affected species other than cattle because the Final Rule, which was enjoined, not only pertains to cattle but numerous other species including camelids. The district court's injunction prohibited too much and unreasonably closed the border to camelids and other species when the only relief sought was a ban on the importation of live cattle.

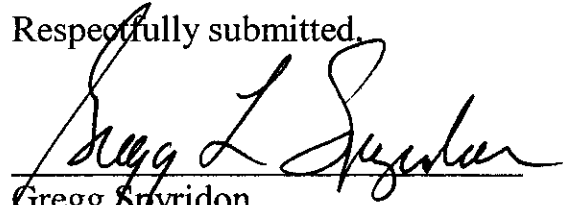
In other words, Camelids support the appellant USDA's contention that the district court abused its discretion in issuing the injunction. The appellant USDA argued that the district court abused its discretion by substituting its judgment for that of USDA. (See Appellant's brief at p. 37) The Camelids argue that the abuse of discretion also occurred when the court failed to discharge its legal duty to tailor the injunction to the relief requested. Thus, the Camelids offer additional grounds for achieving the goal of vacating the injunction based on the district court's abuse of discretion. The fact that neither USDA nor R-CALF addressed Camelids' argument not only underscores the importance of the Camelids' brief, but also makes a compelling argument for acceptance of the amici brief. The Camelid brief brings relevant matter (the district court's duty to narrowly tailor the injunction to the specific harm claimed) to the attention of the court that was not adequately addressed by the parties as required by FRAP 29.

R-CALF sought to enjoin a Final Rule that pertained to cattle and other species. It is, therefore, hard to imagine how they can argue that an amici brief on behalf of the owners of non-cattle species affected by the injunction, which brings to this Court's attention the failure of the district court to "narrowly tailor an injunction to the specific harm claimed by the

party", improperly expands the appeal. The Camelids have a sufficient "interest" in the case, their brief is "desirable" and discusses matters that are relevant to the disposition of the case. See *Neonatology Assoc. P.A. v. Comm'n of Internal Revenue*, 293 F.3d 128 (3rd Cir 2002). Accordingly, for the reasons set forth above, Camelids respectfully urge this Court to accept its amici curiae brief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of May, 2005, a true and correct copy of the above and foregoing were served upon the following via electronic mail and via United States mail, first class, postage prepaid:

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